

**FILED**

**JUL 27 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

DARRYL KEVIN SAWYER,

Petitioner - Appellant,

v.

RICHARD MORGAN, WSP,

Respondent - Appellee.

No. 05-35696

D.C. No. CV-04-02373-MJP

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
Marsha J. Pechman, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Washington state prisoner Darryl Kevin Sawyer appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition challenging the Indeterminate Sentence Review Board's ("Board") decision setting his minimum

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

prison term at 500 months. We have jurisdiction pursuant to 28 U.S.C. § 2253.

We review de novo the district court's denial of a 28 U.S.C. § 2254 habeas corpus petition, *see Chia v. Cambra*, 360 F.3d 997, 1002 (9th Cir. 2004), and affirm.

The district court dismissed as untimely five claims challenging the Board's decisions establishing a minimum prison term of 500 months. Sawyer fails to raise any contentions on appeal challenging timeliness. We conclude that the district court properly dismissed these five claims as time-barred. *See Calderon v. United States Dist. Court (Beeler)*, 128 F.3d 1283, 1286-88 (9th Cir. 1997), *overruled on other grounds by Calderon v. United States Dist. Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998) (en banc).

Sawyer's contention regarding his claim that the state court erred by stating that the Board had no authority to set a minimum term for murder fails, as we defer to the Washington court's interpretation of state law absent a finding that the court's interpretation was untenable or amounted to a subterfuge to avoid federal review of a constitutional violation. *See Oxborrow v. Eikenberry*, 877 F.2d 1395, 1399 (9th Cir. 1989).

Sawyer's motion for appointment of counsel is denied.

**AFFIRMED.**